a. Verizon has not demonstrated that allowing CLECs to continue interconnecting at its tandems, even after traffic has exceeded a DS-1 threshold, would cause irreparable harm.

Verizon proposes that AT&T forfeit its right to interconnect at any technically feasible point on Verizon's network if the traffic volume routed through a Verizon tandem to a particular end office "exceeds the CCS busy hour equivalent of one (1) DS-1 at any time and/or 200,000 combined minutes of use for a single month" ("DS-1 Threshold").[77] Once the traffic reaches that threshold, Verizon proposes that AT&T "promptly" establish direct trunks to that end office.[78]

AT&T objects to Verizon's proposal because it is contrary to AT&T's right to select the locations at which it interconnects with Verizon's network. As described in the previous section, the § 251 (c)(2)(B) standard for selecting points of interconnection is technical feasibility. The FCC rules expressly acknowledge that interconnection at a tandem switch meets the technically feasible standard.[79]

Before an ILEC can refuse to interconnect at a point requested by another carrier, it "must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or

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77 Verizon Proposed Contract, § 4.2.8.

78 *Id.* Although the language states that the threshold is "either/or" the DS-1 equivalent at any time or the 200,000 combined minutes of use for a single month, Verizon's witness Mr. Albert asserted that the intention was not to have the threshold kick in as a result of a single traffic spike but rather to rely on the 200,000 combined minutes of use based on a monthly traffic study. Tr. at 1184. Verizon's proposed language, however, does not clearly reflect Mr. Albert's interpretation. In addition, irrespective of Mr. Albert's "concession", a single significant traffic spike would affect the overall traffic volume for that one-month period. Accordingly, Verizon's proposal to implement direct trunking on a very limited one-month period ignores the realities associated with the natural fluctuation of traffic. Moreover, as will be explained in subsection b, even Verizon does not adhere to a strict one month standard.

79 47 C.F.R. 51.305 (a)(2)(iii).

access."[80] Verizon, however, has not met this test. Rather, it simply asserts, with no factual support, that its proposed threshold is necessary to protect its tandems from exhaustion.[81] And although it claims that some of its Virginia tandems will reach exhaust over the next several years,[82] nothing about that claim warrants the restriction on interconnection Verizon proposes here. For one thing, there is no evidence that this tandem exhaust, if it occurs at all, is being caused by CLEC interconnection at the tandems. CLECs have about 16% of the tandem trunks, while Verizon's own traffic accounts for nearly half (about 47%).[83] Verizon offered no evidence that CLEC trunks are growing faster, in absolute numbers, than Verizon own trunks.[84] In any event, no one can say that one category of traffic is "the" cause of an exhaust. As both Mr. Albert and Mr. D'Amico admitted, *everything* that goes through the tandem is contributing to tandem exhaust.[85]

It is also fundamentally true that exhaustion often may be postponed or avoided by proper forecasting, trunk rearrangements and deployment of additional tandem switching capacity.[86] Verizon, however, presented no specific evidence on efforts that it has taken to prevent or minimize tandem exhaustion. Finally, even if Verizon must

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80 *Local Competition Order*, ¶ 203.

81 Verizon Exh. 4 at 36; Tr. at 1435, 1438.

82 For Virginia, Verizon projects two tandems to exhaust in 2001 and two tandems to exhaust in 2003. Cox Exh. 8.

83 Cox Exh. 12.

84 Verizon did not answer AT&T's request for this forecasted information. *See* AT&T Exh. 38. Thus, there is not any specific evidence relating to future growth of CLEC traffic over Verizon trunk groups. Given the state of the economy, and the numerous bankruptcies that have taken their toll on the CLEC industry, one can only surmise that CLEC requests will either remain flat or will decline in the immediate future. *See* Tr. at 13.

85 Tr. 8 at 2231; Tr. at 1287.

86 AT&T Exh. 3 at 49.

deploy additional tandem capacity, the increased cost to deploy these tandems does not in and of itself meet the "significant adverse impact" standard established by the Commission. The Commission has acknowledged, in its *Local Competition Order* in which it stated that incumbents are required to adapt their facilities for the purposes of §251(c)(2) and §251(c)(3),[87] that ILEC interconnection obligations may require ILECs to modify their network to accommodate interconnection.

b. The DS-1 threshold is not reasonable or appropriate for CLECs.

Verizon argues that the DS-1 Threshold is appropriate because it is the threshold it uses for its own traffic. It does not, however, have any written documentation of this practice, nor does it have the study that apparently was done to support this threshold.[88] Thus, there are no specific details on the record on exactly how Verizon implements this "requirement," nor is there any other record evidence that Verizon's engineers regularly comply with this requirement in the exact manner it would impose on CLECs. For example, it appears Verizon does not immediately establish direct trunks for its own traffic the first month that a DS-1 threshold is met. Mr. Albert not only admitted that all carriers can experience spikes in traffic that are not representative of their average level of traffic,[89] he also acknowledged that Verizon's own internal (but undocumented) test is far different than what Verizon would apply to CLECs: "...if you have a trunk group that is a three month repeater, basically meaning its exceeded its engineering design for the three month period, that is the time indicator of insufficient trunking capacity, and that's

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87 *Local Competition Order* at¶ 202.

88 Tr. at 1186; AT&T Exh. 3 at 51.

89 Tr. at 1183.

a prime measure that we got through all the states in the east, and that's the one we pay money on when we miss it." Tr. at 2366 -- 67.

The record reveals that the DS-1 threshold is not appropriate for CLECs. As Mr. Albert acknowledged, CLEC's growth patterns are more spiky in nature than those experienced by CLECs.[90] This is why, as testified by both Mr. Talbott and Dr. Collins, CLECs network building blocks are DS-1s,[91] but rather, as Mr. Talbott explained, are higher capacity services such as a DS-3 or, in some cases as high as a SONET OC48.[92] In any event, there are additional factors AT&T reviews, other than traffic volumes, to decide when to direct trunk to an end office, such as customer forecasts, rights of way issues, collocation availability, distance issues, and leased facility rates.[93] Obviously, results will vary depending on the carrier, its network and its targeted markets. Thus, Verizon's one-size-fits-all approach, if adopted, would force CLECs into uneconomic interconnection.

Apart from all of this, Verizon's insistence on direct trunking is at odds with the Act and the FCC. The FCC addressed this very issue in the *Local Competition Order* when discussing whether carriers would be discouraged from routing through an ILEC's tandem because of the higher tandem rate:

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90 *Id.* Also, there is no parallel between Verizon and CLEC costs to establish direct trunking. Verizon has pre-existing network connections to each of its serving wire centers within a LATA, which provides Verizon with a substantially lower traffic volume threshold at which direct trunking becomes economic. AT&T Exh. 8 at 32. Mr. Albert confirmed this difference when he acknowledged that when Verizon takes traffic out of the local calling area, it is probably doing so on its existing inter-office facilities. Tr. at 1238.

91 Tr. at 1423, 1427.

92 Mr. Talbott explained that the economic breakpoint for a DS-3 varies and that under some circumstances, it could be as high as 14 DS-3s. Tr. at 1428. AT&T's economic breakpoint is based upon an economic CCS threshold that compares the cost of direct trunking against the associated costs of tandem switching and common transport. AT&T Exh. 3 at 51.

93 Tr. at 1012-14, 1428.

> New entrants will only be encouraged to interconnect at end office switches rather than tandem switches when the decrease in the incumbents LEC transport charges justifies the extra costs incurred by the new entrant to route traffic directly through the incumbent LECs end-office switches. Carriers will interconnect in a way that minimizes their costs of interconnection, including the use of cost-based LEC network elements[94]

Inherent in this statement is an acknowledgment that it is the CLEC that has the right to make the decision regarding when to direct trunk.

c. Verizon's proposed threshold amounts to discriminatory interconnection

Verizon's insistence on direct trunking once traffic reaches the DS1 level unfairly discriminates against CLECs in violation of § 251(c)(2)(D). Verizon does not apply this DS-1 standard uniformly. Specifically, Verizon admits that its exchange access tariff places no limitations on the volume of traffic that an exchange access customer may route through a Verizon tandem.[95] Thus, Verizon is willing to keep IXC traffic—and the higher per minute revenue it generates—on its tandems at any levels—but wants CLECs' lower-revenue local traffic off the tandem the instant volumes reach the DS1 level. This is blatantly discriminatory.

Verizon also proposes to treat it own traffic differently than CLEC traffic. Some 10 to 20 percent of Verizon's traffic overflows to the tandem during the busy hour. [96] Verizon is not proposing to provide CLECs with similar overflow opportunities.[97]

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94 *Local Competition Order* at ¶ 1091.

95 Tr. at 2203; Cox Exh. 10.

96 Tr. at 1227.

97 Although Verizon did not propose to AT&T the 240 trunk limit on tandem trunking (which in effect amounts to a prohibition on traffic overflow), it also did not affirmatively provide that AT&T has the right to overflow traffic to Verizon's tandem. In order to ensure that AT&T has that right, AT&T asks the Commission to affirm that where AT&T establishes direct end office trunks AT&T has the right to overflow traffic through Verizon's tandem – just as Verizon provides for its traffic.

Issue I-3 *Reciprocal Collocation* Does AT&T have an obligation to provide Verizon with collocation pursuant to Section 251(c)(6) of the Telecommunications Act of 1996?

I. Section 251(c)(6) of the Act Does Not Impose Any Obligation on AT&T or Any Other Competitive Local Exchange Carriers to Provide Collocation to Verizon.

AT&T, as a competitive local exchange carrier, cannot be compelled to offer collocation under § 251(c)(6) of the Telecommunications Act of 1996 ("Act"). Only *incumbent* local exchange carriers are obligated to provide collocation to other carriers under the Act. Although not legally obligated to do so, AT&T has voluntarily entered into "space licenses" with Verizon or its affiliates at certain AT&T locations. AT&T will continue to entertain requests for such licenses where adequate space is available and all when other necessary conditions are satisfied.[98]

Section 251(c)(6) of the Act imposes on *incumbent* local exchange carriers, such as Verizon, "the duty to provide, on rates, terms and conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements. . . ." These obligations, however, do not extend to *non-incumbent* carriers, *i.e.*, competitive local exchange carriers, such as AT&T. If Congress had intended that CLECs should be subject to collocation obligations, it simply would have included collocation obligations under § 251(b), which delineates the duties of *all* carriers (both incumbents and competitive LECs). Congress chose not to do so.[99]

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[98] AT&T Exhibit 5 at 3-5.

[99] A local exchange carrier could be treated as an incumbent only if the carrier meets the rigorous criteria provided for in § 251(h)(2) of the Act. 47 U.S.C. § 251(h)(2). Verizon has not even alleged that AT&T could be treated as an incumbent under that provision.

Verizon's own witnesses on this issue expressly acknowledge that AT&T and the other petitioners are "not required by the Act to offer collocation at their facilities."[100] Verizon (through its predecessor company, Bell Atlantic-Virginia, Inc.) admitted as much in its 1997 interconnection agreement with TGC[101] when it agreed that TCG was "not required" under § 251(c)(6) of the Act to offer a space sharing arrangement to Verizon.[102] Thus, the issue of whether AT&T has collocation obligations to Verizon under the Act can be conclusively resolved in AT&T's favor based on Verizon's own words.

Throughout its testimony, Verizon could only resort to a "fairness" argument to attempt to explain why a collocation obligation ought be applied to CLECs notwithstanding the unambiguous language in the Act.[103] Of course, Verizon does not—and cannot—explain why its interpretation of "fairness" should override the express provisions of the Act. Under cross examination, Verizon admitted that it sought the option to collocate as a means to ensure multiple modes of interconnection, thus allowing Verizon greater control over its interconnection costs. Mr. Albert testified that "we didn't want to be caught behind the 8-Ball with the only [interconnection] option available to us being to have to buy transport from the CLEC in order to deliver our traffic, and without us having any alternatives at all to potentially reduce those costs being held hostage."[104] Yet, the record in this proceeding is abundantly clear that Verizon already has multiple interconnection options available such as mid-span fiber meets, the terms of which are

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100 Verizon Exhibit 4 at 29; *see also* Tr. at 1263: "I'm sure in the testimony we said that there was nothing legally that requires the CLECs to allow us to collocate."

101 TCG was acquired by AT&T in 1998.

102 AT&T Exhibit 5 at 5.

103 Verizon Exhibit 4 at 29.

104 Tr. at 1268.

also being considered in the instant arbitration.[105] Additionally, Verizon purchases entrance facilities pursuant to approved tariffs.[106] Indeed, the record does not suggest that Verizon has ever filed a complaint against such tariffed rates. In any case, Verizon's assertion that it has fewer economic interconnection options available than it might like—even if true—would provide neither the justification nor the jurisdiction for the Commission to ignore the express terms of the Act by obligating CLECs to provide collocation to incumbents like Verizon.

The New York Public Service Commission was not persuaded by Verizon's identical arguments on this issue. In summarily rejecting Verizon's identical position in the New York AT&T-Verizon arbitration, the New York PSC stated "[w]e find that the new agreement need not impose any collocation or UNE obligations on AT&T, inasmuch as it is a CLEC and not an ILEC."[107] Commissions have made similar determinations elsewhere.[108] Verizon has not provided any sound legal basis for this Commission to rule any differently on this issue.

While AT&T is not *obligated* under the Act to provide collocation to Verizon, it may *voluntarily* agree to provide Verizon a space license to locate certain equipment at an AT&T location and to use AT&T's support services (*e.g.*, power, heating ventilation,

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105 *See* Issue III-3 ("Should Mid-Span Fiber Meet facilities be established within 120 days from the initial mid-span implementation meeting?"). *See also* Schedule 4, §§ 1.6 & 2.6. Verizon, of course, is not precluded by law from arguing for what it considers just and reasonable rates, terms and conditions for other modes of interconnection with CLECs.

106 Tr. at 988-89, 990, 1023.

107 Order Resolving Arbitration Issues, *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.* Case 01-C-0095 (issued and effective July 30, 2001) at 81.

108 *See e.g., In re AT&T Communications of Pacific Northwest, Inc.*, 1997 WL 56882 (Oregon PUC) (Jan. 13, 1997).

air conditioning and security for the equipment). This type of licensing arrangement is strictly discretionary on AT&T's part, and as such, could not be compelled or required under § 251(c)(6). AT&T, however, has previously negotiated such agreements with Verizon.[109] Moreover, AT&T is willing to continue to negotiate appropriate space licenses in situations where sufficient space is available and where all other applicable conditions are satisfied.[110]

Issue I.4 Can Verizon force AT&T to establish a point of interconnection at a particular end office, when AT&T traffic to that end office reaches a certain threshold traffic level?

This issue is the same as Issue I.1.A. Please refer to AT&T's discussion of this issue, *supra.*

Issue III.1 *Tandem Transit Service* Does Verizon have an obligation to provide transit service to AT&T for the exchange of local traffic with other carriers, regardless of the level of traffic exchanged between AT&T and the other carriers?

Tandem transit service occurs when Verizon provides tandem switching and common transport for local and intraLATA toll traffic between AT&T and LECs other than Verizon.[111] Verizon claims that while is not required to carry transit traffic, it will do so only so long as the traffic volumes between AT&T and the other LEC do not exceed a DS-1 threshold, at which point Verizon would terminate the tandem transport service.[112] Verizon's position is contrary to law, is bad public policy and should be

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109 Tr. at 1032.

110 AT&T Exhibit 6 at 2.

111 AT&T Exh. 3 at 53.

112 Verizon Exh. 4 at 36.

rejected.

Verizon has a legal obligation to provide transit service to AT&T, regardless of the level of traffic exchanged between AT&T and the other carriers. This is because Verizon is required, pursuant to §251(c)(2)(A), to interconnect with carriers for transit and routing of telephone exchange service and exchange access. Nothing in the statute limits this duty only to traffic between AT&T and Verizon. Moreover, Verizon's arbitrary capacity restriction also violates it duties under the Act because it eviscerates AT&T's rights under § 251(a)(1), to interconnect indirectly with the facilities and equipment of other carriers,[113] and violates its § 251(c)(2)(B) obligations to provide interconnection at any technically feasible point.[114]

Even if Verizon's DS1 threshold requirement could be squared with the Act, which it cannot, it should be rejected as highly inefficient and harmful to AT&T.[115] For one thing, Verizon is plainly wrong to suggest that its proposal to terminate Tandem Transit Service between AT&T and a third party carrier within 60 days after AT&T and that carrier have reached a traffic threshold of (1) DS1 volume of traffic for any three months in any consecutive six month period, or for any consecutive three months,[116] is reasonable because Verizon uses a DS-1 threshold for its traffic.[117] The discussion on Issue I-1a, rebutting Verizon's proposal for mandatory end office POIs, already proves

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113 Indirect interconnection was described by the FCC in the *Local Competition Order* as interconnection to other carriers via the incumbent's network; which is precisely what transit service provides. *Local Competition Order* at ¶ 997.

114 Trunk interconnection points for a tandem switch are technically feasible points. 47 C.F.R. 51.305(a)(2)(iii).

115 AT&T Exh. 3 at 54.

116 *Id.*; *see also* Verizon Proposed Contract, § 7.2.4.

117 Verizon Exh. 4 at 36.

that the DS-1 threshold is not reasonable or appropriate for CLECs, and need not be repeated here.

The problem is further exacerbated here, however, because any direct trunking arrangement displacing a Tandem Transit arrangement would require AT&T to have .an interconnection agreement with the third party carrier. The time and expense to negotiate and possibly arbitrate such agreements is an obvious impediment to efficient interconnection, and a wholly unnecessary one. Given Verizon's size and the reach of its network, it is a certainty that Verizon will already have such arrangements in place.[118]

Verizon also claims here, as it does at Issue I-1a, that tandem transit service will accelerate exhaustion of its tandems.[119] AT&T will not repeat its arguments here rebutting that claim, except to say that, in this instance, the tandem exhaust argument is even more tenuous. There is far less likelihood that traffic between AT&T and other LECs would exhaust Verizon's tandems more quickly than would Verizon's own traffic.

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[118] The financial and operational effect of Verizon's direct interconnection requirement would be significant. Today carriers that are indirectly interconnected exchange transit traffic on a bill and keep basis without executing an interconnection agreement (ICA) in order to route traffic efficiently and to reduce administrative costs. Verizon' proposal, however, would require those carriers to enter into ICAs and resolve a broad range of issues, such as: one-way versus two-way trunking, billing and recording, signaling, and allocation of interconnection expenses between the parties. All of these issues, of course, will have to be negotiated between the parties – not an insignificant task. AT&T Exh. 3 at 57. given that the levels of transit traffic are often minimal, Verizon's proposal would result in numerous small scale high cost inefficient circuits, a fact acknowledged by Worldcom's witnesses Ball and Grieco (MCI Exh. 15 at 60):

> Verizon's proposal to limit transit service to a DS-1 of traffic only is not reasonable. The cost of a physical interconnection between two companies for one DS-1 of traffic would be disproportionate for this small level of demand. A dedicated piece of transmission equipment, which in today's network would be at least a DS-3 (28 DS-1s), would be woefully underutilized at a 3.5 % rate (1 out of 28 DS-1s). Verizon's proposal would create many small scale but high cost, and inefficient, circuits

[119] *Id.*

See discussion of Issue I-1a. Verizon simply does not know how much CLEC tandem routed traffic is tandem transit traffic.[120]

As also discussed at Issue I-1a, Verizon's proposal is discriminatory in violation of § 251(c)(2)(B) in that it would remove CLEC local traffic from its tandems (for which it receives TELRIC rates), but leave in place IXC access traffic (for which it receives its markedly higher carrier access rates).

Issue III.2 Should transit services be priced at TELRIC, regardless of the level of traffic exchanged between AT&T and other carriers?

Since Transit Service is nothing more than the provision of indirect interconnection by the ILEC,[121] and since the ILEC has an obligation to provide interconnection at TELRIC-based costs pursuant to § 252(d) of the Act, it follows that Verizon has the obligation to provide Transit Service to AT&T at TELRIC-based costs. This pricing standard should apply regardless of either the level of traffic, or the time frames over which the ILEC carries the traffic during the term of the Interconnection Agreement.[122] Moreover, the cost to provide the transiting function is the same whatever the traffic volume.[123]

Despite the requirements of § 252(d), Verizon refuses to price its Transit Service at TELRIC-based rates. Rather, Verizon proposes three different charges related to

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120 Tr. at 2224.

121 The FCC in its Local Competition Order at § 997 stated that CLECs have the right pursuant to §251(a)(1), to determine, based on their own economic and technical considerations, whether to connect directly or indirectly with other carriers. Indirect interconnection was described to be interconnection via an incumbent LEC's network.

122 AT&T Exh. 3 at 60.

123 MCI Exh. 15, at 39.

Transit Service, only one which, according to Verizon, is TELRIC-based.[124] That rate element, the Transit Service Charge,[125] compensates Verizon for the tandem switching and transport Verizon uses to deliver the AT&T call to the third party carrier.[126]

The only remaining legitimate costs associated with Transit Service are those Verizon pays the third party terminating carrier. AT&T has agreed to reimburse Verizon for any such charges.[127]

Verizon, however, proposes two additional charges for transit service—the so-called Transit Service Trunking Charge[128] and the equally suspect Transit Service Billing Fee,[129] neither of which is TELRIC-based. Both of these additional charges, Verizon states, are intended to make Verizon "whole" for its provision of Tandem Transit Service and, Verizon concedes, to give CLECs an incentive to enter into their own direct interconnection agreements with other carriers.[130] But those are insufficient reasons to support the charges. Nothing in the Act's interconnection requirements is aimed at preserving Verizon's existing revenue streams or at penalizing CLECs for failing to

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124 Verizon Response at 26; *see also* Verizon Exh. 4 at 39.

125 AT&T Exh. 3 at 60-61.

126 *Id.* at 61.

127 *Id.*

128 The Transit Service Trunking Charge, (which Verizon states is equivalent to a tandem port charge), is levied for 60 days after the above referenced 180 days, or if traffic levels have exceeded the DS-1 threshold for three consecutive months or any three months during the initial 180 day period. Verizon states that this port charge is assessed to account for the additional transport and tandem switching incurred to accommodate such traffic beyond the DS-1 threshold. Verizon Exh. 18 at 24.

129 Verizon anticipates that the Transit Service Billing Fee will be applied if the tandem is used to route the transit traffic beyond an initial 180 days from the effective date of the Agreement, or if a DS-1 threshold is exceeded for three consecutive months, or any three months during the first six months of the Agreement. Verizon has stated that this fee is designed to recover costs it pays the New York States Access Pool to perform tandem transit billing. *Id.*

130 Verizon Answer at 26.

interconnect as the ILECs would prefer. Rather, the Act and this Commission's rules require that these services be provided at TELRIC based rates.

Verizon's two additional transit charges also should be rejected for their unreasonable time and capacity thresholds. Neither the DS-1 threshold, nor the 180 day trigger associated with these charges is reasonable. The DS-1 threshold is discussed in Issue I.1a. The 180 days trigger is equally unreasonable because it is entirely arbitrary.

Issue III.3 *Meet Point Interconnection* Should the selection of a fiber meet point method of interconnection (jointly engineered and operated as a SONET ring) be at AT&T's discretion or be subject to the mutual agreement of the parties?

I. The law grants AT&T the right to request any method of technically feasible interconnection – including meet point interconnection -- without Verizon's concurrence

Mid-span meet point interconnection (meet point interconnection) is a method of interconnecting with the ILEC's network whereby the parties jointly establish a fiber optic facility system utilizing SONET protocol and each party provides fiber optic terminating equipment located in its own serving wire center.[131] Fiber optic strands originate from the terminating equipment on each end and meet at a fiber splice point (meet point) between the serving wire centers. The POI for AT&T's traffic would be located at the terminating facilities point on Verizon's network, and the POI for Verizon's traffic would be at the terminating facilities point designated by AT&T on its network.[132] The Parties share the use of the Meet-Point facility that spans the two parties' wire centers. AT&T proposes that each Party be allocated half of the facility

[131] AT&T Exh.3 at 71.

[132] *Id*

channels for their use without cost.[133] The key advantage of the mid-span method of interconnection avoids the need for collocation because the networks are connected outside of the ILEC's serving wire center.[134]

AT&T has the sole right, pursuant to the Act, FCC regulations, and the *Local Competition Order,* to require any technically feasible method of interconnection, including Meet Point arrangements. Mutual agreement for the interconnection method chosen by AT&T is not required. Moreover, consistent with its right to select the POI, AT&T also has the right to designate the location of the mid-span interconnection, including the fiber splice and the terminating facility points.

Notwithstanding the requirements of the Act, Verizon claims that parties must mutually agree to a meet point arrangements because such arrangements require joint provisioning and utilization.[135] Verizon also objects to AT&T's proposal because it claims it could be required to build out its facilities at great cost.[136] Neither of these objections have any merit.

AT&T, as a CLEC, has the right under the Act to require any technically feasible method of interconnection and Verizon, as an incumbent local exchange carrier, has the duty under the Act to provide interconnection for the facilities and equipment of any requesting telecommunications carrier at any technically feasible point.[137] In the *Local Competition Order,* the FCC explained that this obligation includes not only the

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133 AT&T Exh. 1B, Sch. IV § 1.6.1.

134 AT&T Exh. 3 at 72.

135 Verizon Exh. 4 at 25.

136 *Id.* at 26.

137 § 251(c)(2)(B).

obligation to permit interconnection at any technically feasible point, but the obligation to allow any technically feasible *method* of interconnection as well[138], a point confirmed by the FCC's regulations on interconnection:

> Except as provided in paragraph (e) of this section [concerning collocation], an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, *any technically feasible method of obtaining interconnection* or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.[139]

Interconnection via a Meet Point arrangement is unarguably a technically feasible method of interconnection. The FCC has endorsed the method.[140] AT&T and other CLECs currently interconnect with various incumbent LECs in this manner[141] Even Verizon's witness agrees that meet point interconnection is technically feasible.[142]

Verizon's argument is not over feasibility, but instead is that its *mutual agreement* is required before meet point interconnection can be implemented because it involves joint provisioning and utilization.[143] But while AT&T would agree that joint coordination is important in establishing a meet point arrangement, that goes to *how* the arrangement will be established, not to *whether* it should be established at all. Nothing in

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138 The FCC stated, "We conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled network elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled network elements" *Local Competition Order* at ¶ 549; *see also* Tr. at 1039 (where Cox witness Dr. Collins states that "... this discussion about shared fiber meets is to provide one of the alternative interconnection vehicles that exists.").

139 47 C.F.R. § 51.321(a)(emphasis added).

140 47 C.F.R § 51.321(b)(2).

141 Tr. at 1020 (Cox's witness Dr. Collins discussion of using midspan fiber meets for the past four years).

142 Tr. at 1112; *see also* Tr. at 1231 ("Verizon interconnects with other ILECs in Virginia by means [of] legacy mid-span meets, usually at the certified boundary of the two companies.")

the law mandates that the ILEC must first agree to meet point interconnection before it can be implemented.

AT&T's proposed contract language should resolve any Verizon concerns about *how* meet point interconnection should be implemented. AT&T has proposed a very reasonable process for working out the numerous details associated with the development and provision of meet point interconnection, a process that is consistent with AT&T's right to select meet point interconnection, yet recognizes the need for consensus on items such as routing, facility size and equipment to be used. Specifically, § 1.6.4 of AT&T's Schedule 4 identifies a process for the Parties to agree to the various implementation issues, and invokes the ICA's dispute resolution provisions if they cannot. This proposal is reasonable, consistent with the law and addresses Verizon's concerns regarding the need to agree on certain terms and conditions associated with mid-span interconnection. It does not however, as Verizon's proposal does, obviate AT&T's right to request mid-span interconnection and to receive such interconnection within a reasonable time frame.[144]

Verizon also suggests that mutual agreement is required to protect it from being forced to engage in extremely expensive build outs of its facilities.[145] But the fact is, Verizon is already protected in this regard. First, as AT&T's witness Mr. Talbott

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143 Verizon Exh. 4 at 24.

144 Verizon's proposal, as will be explained in the following section, does not provide for any process or time frames within which to agree to the various mid-span terms and condition. Instead the language is completely open ended in nature stating that Mid-span meets are expressly conditioned upon the Parties reaching prior agreement on all the terms and conditions. *See,* Verizon Proposed Contract § 4.3. There is no requirement to have a meeting within any time frame from the date such interconnection is requested, no requirement to agree or proceed to dispute resolution within any time frame.

145 Verizon Exh.18 at 15.

explained, AT&T is willing to bear half of the construction costs of the facilities, regardless of the location of the splice point, so it is in AT&T's interest to designate a facility span that is a reasonable distance and not prohibitively expensive.[146] Second, although the FCC has made it clear that ILECs are required to adapt their facilities to accommodate interconnection,[147] ILECs are only required to build out their facilities to the extent that the buildout amounts to a "reasonable accommodation of interconnection."[148] Thus, Verizon has the ability to reject any requested buildout that, based on all the other terms and conditions associated with the mid-span construction and operation, does not amount to a reasonable accommodation of interconnection.[149] However, that right to reject a particular meet point proposal, based on an evaluation of all the terms and conditions proposed by a CLEC, is not the same as the right to require mutual agreement for meet point interconnection in general.

The same arguments Verizon offers here were rejected in a MediaOne arbitration in Massachusetts, where the Massachusetts D.T.E. held:

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146 Tr. at 1041, 1042, 1050.

147 *Local Competition Order* at ¶ 202.

148 *Id.* at ¶ 553.

149 All parties, including Verizon, have essentially acknowledged that it is not appropriate to designate a particular buildout distance as "reasonable." The reasonableness of the buildout would depend on the individual circumstances of the specific mid-span involved. *See* Tr. at 1050, 1051, 1133, 1196, 1197. This is the same position taken by the Massachusetts DTE when examining this issue. It noted that what constitutes a reasonable accommodation of interconnection could vary from project to project and thus it refused to identify a particular build-out distance for meet point interconnection. *Petition of Media One, Inc. and New England Telephone and Telegraph, for arbitration*, D.T.E 99-42/43, 99-52, at 45 (August 25, 1999) ("MediaOne Order").

> Therefore, the Department finds that because a mid-span meet arrangement is technically feasible, Bell Atlantic must provide this method of interconnection to MediaOne and Greater Media. Bell Atlantic cannot condition this type of interconnection, as it claims, on the mutual agreement of the parties, or on the availability of facilities.[150]

Accordingly, AT&T urges the FCC to support the law it has helped to develop in this area and find, similar to the Massachusetts D.T.E., that mid-span meets must be provided by Verizon, upon AT&T's request, consistent with the process and procedures set forth in AT&T's proposed contract language.

Issue III.3.a Should Mid-Span Fiber Meet facilities be established within 120 days from the initial mid-span implementation meeting?

Because Verizon has no incentives to implement meet point arrangements for its competitors, the agreement needs to include firm interconnection activation dates for meet point interconnection. AT&T proposes that mid-span meet facilities be activated no later than 120 days from the initial mid-span implementation meeting which is to take place within 10 days from the receipt of AT&T's complete and accurate response to Verizon's mid-span questionnaire.[151]

Verizon, not surprisingly, proposes no specific time frame for activation of meet point interconnection, but rather requires the parties to agree to all aspects of the meet point interconnection in a Memorandum of Understanding (MOU) before any time frames begin to run.[152] Its commitment, thus, is to no time frame at all.[153] Verizon's

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150 *MediaOne Order* at 40.

151 AT&T Exh. 1B Schedule 4 § 1.6.4.

152 Verizon Exh. 4 at 24.

153 Verizon's witness Mr. Albert suggested that the Parties could use dispute resolution if they could not agree to all the terms for meet point interconnection to be included in the MOU. Tr. at 1198.

open ended process amounts to an unreasonable condition of interconnection pursuant to § 251(c)(2)(D) which should be rejected.

A deadline is necessary to ensure that Verizon will follow through on its § 251(c)(2)(D) obligation Unless it is known with certainty when its interconnection will be operational, a company often cannot implement or finalize its business plans. As AT&T's witness Mr. Schell testified, in the past meet point interconnection lost favor within AT&T because AT&T was not able to obtain any assurance that it could be implemented within a specific time frame.[154] A specific implementation deadline will restore its utility.

AT&T's request for a deadline is not out of the ordinary. The imposition of time frames for other forms of interconnection, such as collocation, are commonplace, and recognizes the need for certainty when a carrier is growing a network.[155]

The Massachusetts DTE recognized the importance of including an activation deadline for mid-span meet interconnection when, in its *MediaOne Order,* it stated:

Such a suggestion is not adequate or consistent with Verizon's proposed language that simply provides that the Parties must agree to the terms and conditions in the MOU before any time frame begins to run. Thus, dispute resolution would not be applicable, because mutual agreement is required per Verizon's language. If parties cannot agree, no meet point can be implemented. AT&T's language, on the other hand, specifically provides for time frames within which meet point interconnection must be implemented and it specifically provides that if the Parties cannot agree to the implementation provisions, the dispute resolution section of the Agreement shall apply. Moreover, AT&T's language specifically requires a Party to request a stay of the implementation timeframe if circumstances prevent it from meeting the interconnection activation date. In this way, AT&T's language provides for a process and time frame to ensure that meet point interconnection is implemented within a reasonable time, yet it also enables a Party – through a request for a stay – to delay the implementation time frame with approval from a state commission, if circumstances require. Thus, AT&T's language thus best balances the needs of both parties.

154 Tr. at 1456.

155 Verizon witness Albert indicated that "... there were a lot of details and specifics involved in getting each individual unique mid-span meet worked out." Despite the asserted complexity of this method of interconnection, Verizon is opposed to including specific language in interconnection agreements controlling mid-span meets. *See* Tr. at 1266-1267.

> We agree with MediaOne that its ability to make its service expansion plans is hindered by Bell Atlantic's refusal to establish, in the interconnection agreement, an overall date certain by which MediaOne can expect the interconnection process to be complete. Unless a CLEC know with certainty when its interconnection with Bell Atlantic will be operational, it cannot finalize sales marketing and operational support planning, which are critical components to any business plans.[156]

It went on to find that Bell Atlantic's proposed language provided too much discretion over the timing of meet point interconnection and it found that MediaOne language, which provided for a date certain for activation, better balanced the parties' interests.[157]

AT&T's proposal to require activation of Mid-Span meet facilities within 120 days from the initial implementation meeting, which shall be held within 10 business days of the receipt by Verizon of AT&T's response to the Verizon's Mid-Span Fiber Meet questionnaire, is a reasonable one that should be more than adequate for the Parties to complete the process. AT&T's language also recognizes that if exceptional circumstances prevent Verizon from meeting its deadlines, Verizon can seek a waiver from the State Commission.[158]

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156 *MediaOne Order* at 47.

157 *Id.* at 48.

158 AT&T Exh. 1B, Sch. IV § 1.6.4.

Issue III.4 Forecasting Should AT&T be required to forecast Verizon's originating traffic and also provide for its traffic, detailed demand forecasts for UNEs, resale and interconnection?

I. AT&T should not be required to forecast Verizon's originating traffic [III-4[159]].

Each party is in the best position to manage its own traffic and its own network without unnecessary influence or interference by the other party. Consistent with that principle, AT&T and Verizon have agreed to deploy network interconnection facilities that use one way trunks.[160] It follows then that since each party will be designing its own interconnection network, then the originating party is in the best position to forecast the volume of traffic expected on the routes it has included in the design of its interconnection network.[161] Several commissions support this view.[162]

In contrast, Verizon proposes that AT&T provide not only its estimate of AT&T-originating minutes of traffic, but that it also forecast an estimate of *Verizon's* originating

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159 Part of Issue III-4 (Issue III-4a: penalties for inaccurate forecasts and VII-2: demand management forecasts) has been resolved by AT&T and Verizon.

160 AT&T Exh. 13 at 2. Under a one-way trunking arrangement, each party routes its traffic to the other party on a separate trunk group. The originating party selects their transport method, trunk group size and traffic route independent of the other party's choices.

161 *Id.*

162 Decision of Arbitration Panel, *AT&T Communication's of Michigan Inc., and TCG Detroit's Petition for Arbitration*, Case No. U-12465 at 18 (Oct. 18, 2000)(The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000), issue 69, 70; Order, *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40571-INT-03 at 112-113 (Nov. 20, 2000); Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between two AT&T subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, O5-MA-120 at 115-116 (Oct. 12, 2000); Arbitration Panel Report, *Petition of AT&T Communications, Inc. For Arbitration of*

minutes of use.[163] This is not only unreasonable, but illogical. Even Verizon's witness Mr. Albert admits that "Verizon is in a better position to know the characteristics of the growth of its customers"[164] He also acknowledged that CLECs would not have any access to any of Verizon traffic data.[165] Why Verizon would want a forecast from AT&T under these circumstances is far from clear.[166]

During negotiations, AT&T offered a compromise proposal that to the extent that traffic exchanged between the parties is reasonably in balance (*i.e.,* an inbound-outbound ratio of 3 to 1 or less), each party would forecast its own traffic. If traffic is out of balance, (*i.e.,* an inbound-outbound ratio greater than 3 to 1), then the Party terminating the larger share of traffic would forecast *both* inbound and outbound traffic. Responsibilities for providing traffic forecasts would be assigned solely to one Party or to each Party pursuant to the proposed terms for the following semi-annual forecast, based on the inbound-outbound traffic ratio for the preceding semi-annual period.[167]

Verizon rejected this proposal, stating that the compromise proposal does not address Verizon's need for a forecast.[168] But this same proposal has already been

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Interconnection Rates Terms and Conditions with Ameritech, Ohio, Case No. 1188-TP-ARB at 76 (March 19, 2001).

163 Verizon Exh. 9 at 3.

164 Tr. at 1472.

165 *Id.* at 1474.

166 Cox's witness Dr. Collins explained that it was not best practice to attempt to forecast Verizon's outbound traffic. To be done properly, he testified, it requires input of a number of different parameters, very few of which are available when a carrier is on the receiving end of the trunk group, because the terminating carrier cannot see past the first point of switching into the originating carrier's network. *Id.* at 1548.

167 AT&T Exh. 13 at 3.

168 Verizon Exh. 9 at 2.

adopted in New York.[169] This Commission should do the same by adopting AT&T's proposed contract §§ 10.3.1—10.3.3[170] and reject Verizon's proposed contract § 10.3.2.2.

Issue III.4.b Should Verizon have the unilateral ability to terminate trunk groups to AT&T if Verizon determines that the trunks groups are underutilized?

Verizon proposes that it be empowered to unilaterally terminate its outbound trunks (those which carry traffic to AT&T) when it believes those trunk groups are "underutilized."[171] Specifically, Verizon seeks to disconnect its outbound trunks if it *unilaterally* determines that actual traffic volume over a certain 90-day period is insufficient to use sixty percent of a trunk's capacity.[172] Verizon has indicated that it will

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169 Order, *Joint Petition of AT&T Communications of New York, Inc., TCG New York, Inc., and ACC Telecommunications Corp. Pursuant to Section 252 (b) of the Telecommunications Act of 1996 for Arbitration to establish an Interconnection Agreement with Verizon New York, Inc.*, Case 01-C-0095 at 42 (July 30, 2001).

170 *10.3.1 Forecasting Requirements for Trunk Provisioning. AT&T shall provide VZ a two (2) year traffic forecast of outbound trunks. The forecast shall be updated and provided to VZ on an as-needed basis, but no less frequently than semiannually. All forecasts shall comply with the VZ CLEC Interconnection Trunking Forecast Guide and shall include, where applicable, Access Carrier Terminal Location ("ACTL"), traffic type (Local Traffic/Toll Traffic, Operator Services, 911, etc.), code (identifies trunk group), A location/Z location (CLLI codes for AT&T-POI's and VZ-POI's), interface type (e.g., DS1), and trunks in service (if applicable) and trunks required each year (cumulative). 10.3.3 If the volume of local and intraLATA toll traffic exchanged between the Parties is out of balance (which, for the purposes of this Section 10.3 shall be defined as the volume of such traffic originating on one Party's network being greater than three times the volume of such traffic originated on the other Party's network), then the Party originating the lesser volume of local and intraLATA toll traffic shall provide the other Party a trunk forecast in accordance with this Section 10.3 for local and intraLATA toll traffic in both directions (i.e., ingress and egress). If the volume of local and intraLATA toll traffic exchanged between the parties is in balance (i.e., the volume of such traffic originating on one Party's network is no greater than three times the volume of such traffic originated on the other Party's network), then each Party shall provide the other Party a trunk forecast in accordance with this Section 10.3 for local and intraLATA toll traffic originating on its network (i.e., egress only).*

171 Verizon Exh. 4 at 21.

172 Verizon proposes to disconnect trunks for those trunk groups having a utilization level of less than 60%. *Id.*

disconnect trunks even if AT&T specifically indicates to Verizon that it still has a need for those trunks.[173]

This type of unilateral action is contrary to industry standards, adds uncertainty to AT&T's rollout plans, and could negatively impact current customers. AT&T proposes, instead, that no trunks should be terminated unless and until there is mutual agreement between the parties.[174] AT&T's proposal is consistent with good network management practices, the promotion of competition, and continued service to customers. Indeed, AT&T's proposal is consistent with, and adheres to, standard industry practice. It follows the Ordering and Billing Forum (OBF) of the of the Alliance for Telecommunications Industry Solutions procedures interconnected carriers typically use to add, modify and discontinue interconnection trunks.[175] These OBF procedures provide that the party with "control" over the trunk group would issue an Access Service Request to the other party to establish, increase or decrease the trunk group's size, at which point the other party either agrees or requests a meeting (normally a teleconference) to resolve any differences. This is a common, if not daily, occurrence among trunk provisioning centers.[176]

A "mutual agreement" requirement makes sense, and an example illustrates why. If one party alters a trunk group without the other party making a corresponding change, plant becomes stranded, creating unanticipated maintenance problems. Where, for example, AT&T's records showed that a certain trunk group had 48 trunks and Verizon

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173 Tr. at 1522. Despite the potential to effect service quality through Verizon's unilateral action, Verizon does not want the contract to specify a trunk disconnection process. Tr. at 1524.

174 AT&T Exh. 3 at 83.

175 *Id.* at 84.

unilaterally discontinued 24 of them, AT&T personnel could spend needless time trouble-shooting the problem. And until the problem were founddentified, the 24 unused trunk terminations on AT&T's switch would be stranded and not available for use in growing other trunk groups.[177]

Verizon's proposal also could adversely impact consumers. Since trunk traffic is inherently "spiky" by nature, it is not unusual to see substantial increases of traffic after a period of relative stability. Verizon's proposal strips AT&T of any ability to manage such traffic volume increases[178] and could lead to situations where there are too few trunks in a certain trunk group to handle new AT&T customers.[179] It goes without saying, any new AT&T customer experiencing excessive call blocking will not be an AT&T customer for long. Verizon, knowing this, has every incentive to allow the situation to occur.

Another example illustrates how Verizon's proposal could adversely impact customers. If Verizon, for whatever reason, were to delay an AT&T customer's activation date, and then, during that delay, disconnect as "underutilized" the trunks AT&T planned to use to serve that customer, AT&T's customer could experience even greater delays waiting on Verizon to "turn up" alternative trunks.[180]

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176 *Id.*

177 *Id.* at 85-86.

178 Although Verizon stated that it would contact AT&T regarding potential trunk terminations, it indicated if it felt the trunk termination was appropriate, it would still terminate the trunks even if AT&T indicated that the requested trunk termination was not appropriate. Tr. at 1522. This position is odd since Verizon continually has made the point in these hearings that it has the obligation to pay performance penalties on these trunks if blocking occurs. Given this, why Verizon insists on having the right to ignore AT&T's position on the need for the trunks is a mystery.

179 AT&T Exh. 3 at 86.

180 *Id.*

AT&T's proposal, reduced to its essence, is that the parties will cooperate on trunk capacity issues. If Verizon sends AT&T an Access Service Request ("ASR"), and waits to disconnect trunks until AT&T returns a Firm Order Confirmation ("FOC"), this issue is resolved. To that end, AT&T will agree to a Verizon ASR to terminate a trunk group within 10 days from the receipt of the ASR.[181]

Issue V.1 *Competitive Tandem Service* Should Verizon be permitted to place restrictions on UNEs so as to preclude AT&T from providing competitive tandem services?

Issue V.8 Should the contract terms relating to the Parties' joint provision of terminating meet point traffic to an IXC customer be reciprocal, regardless of which Party provides the tandem switching function? Put another way, should the contract terms make clear that AT&T and Verizon are peer local exchange carriers and should not bill one another for meet point traffic?

I. AT&T's provisions for competitive access service should be included in the interconnection agreement [Issue V-8].

AT&T's proposal to provide for its provision of competitive access service in the Agreement is reasonable and provides compensation to Verizon for the functions it provides.

a. Meet Point Traffic – which Verizon agrees to include in the Agreement - is simply the mirror image of AT&T's competitive tandem service.

Verizon agrees that the ICA should provide for "meet point" traffic, which, for purposes of this discussion, is traffic routed between an IXC and a LEC through Verizon's tandem switch.[182] Specifically, Verizon is willing to include meet point traffic in the ICA when its tandem is being used to establish connections between AT&T's local

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[181] Tr. at 1572.

[182] AT&T Exh. 3 at 113.

exchange customers and the IXC's network.[183] For example, if an AT&T customer originates an interexchange call routed to an IXC other than AT&T, and AT&T delivers the call to a Verizon tandem switch, which in turn delivers it to the IXC; Verizon agrees to include terms and conditions for this scenario in the interconnection agreement.[184]

However, Verizon refuses to include any language in the ICA if Verizon and AT&T trade roles. In other words, if AT&T is providing the tandem service to establish a connection between a Verizon end-user and an IXC then, in Verizon's view, it would somehow be wrong for AT&T and Verizon to trade places (relative to the example given above) such that a call from a Verizon end-user is routed through AT&T's switch as the tandem, (*i.e.,* so that the call would go from Verizon's end office to AT&T's switch and then to the IXC).[185] Verizon's view is that it can provide "meet point" tandem services, pursuant to terms set forth in the interconnection agreement, but AT&T cannot.

b. The provisions for competitive access service should be included in the interconnection agreement

Verizon's view is wrong. AT&T has the right, as do all CLECs, to obtain interconnection pursuant to § 251(c)(2) of the Act to provide local exchange *and exchange access* services. Exchange access service is the offering of access to telephone exchange services[186] or facilities for the purposes of origination or termination of telephone toll services. The difference between offering access and receiving access has

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183 Tr. at 2686-87.

184 *Id.*

185 *Id.* at 178.

186 47 U.S.C. § 153(16). Telephone exchange service is (A) "service within a telephone exchange, or within a connected system of exchanges within the same exchange area operated to furnish ...intercommunicating service of the character ordinarily furnished by a single exchange and

been acknowledged by the FCC, when it stated that "an IXC that seeks to interconnect solely for the purposes of originating and terminating its own interexchange access traffic is not offering access, but rather is obtaining access for its own traffic."[187] Here, the circumstance is somewhat different, in that AT&T is not proposing to provide this service to itself, but rather provide it to IXCs.[188] But the FCC has specifically found that "providers of competitive access services are eligible to receive interconnection pursuant to Section 251(c)(2),"[189] which is precisely what AT&T is proposing. Consistent with this right, AT&T proposes interconnection terms and conditions that will enable AT&T to offer a competing exchange access service to IXCs.

Verizon maintains that this issue should not be addressed in this proceeding because, in its view, the interconnection agreement is limited to the interconnection and exchange of local traffic.[190] Verizon asserts that "[i]n the recent *ISP Remand Order*, this Commission reaffirmed the principle that interexchange access traffic is 'carved out' and not a part of the "universe of traffic" that is subject to § 251(b)(5)."[191] But Verizon's arguments are off-the-mark. For one thing, Verizon has already acknowledged that the ICA can include "meet point" provision where Verizon is providing the tandem access arrangements, so there is no basis for it to complain when AT&T wants to offer the same

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which is covered by the exchange service charges, or (B) comparable service provided through a system of switches, transmission equipment or other facilities. 47 U.S.C. § 153 (47).

187 *Local Competition Order* at ¶191.

188 AT&T Exh. 4 at 113.

189 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) ("Local Competition Order"), ¶ 186.

190 Verizon Exh. 4 at 42.

191 *Id. at* 43.

service. Moreover, given that the law requires Verizon to provide interconnection for the provision of exchange access service, Verizon has no basis for excluding from the Agreement AT&T's proposed provisions.

c. There are no technical problems with AT&T's proposal

Verizon claims that technical problems associated with a loss of CIC code billing detail could arise when originating traffic is switched via two tandems. More specically, it asserts that because Verizon's tandem strips the Carrier Identification Code from the initial address message, the AT&T tandem would not receive the necessary billing detail.[192] Verizon's argument, however, raises a technical issue where none exists. AT&T will offer competitive tandem service only where a direct connection exists between the AT&T switch and a Verizon end office. Verizon's end office switch is capable of sending the CIC code to AT&T's tandem.[193] Thus, the "problem" Verizon raises will not occur.

d. AT&T's proposal for competitive tandem service compensates Verizon for the functions its provides

AT&T will offer its competitive tandem service to each Verizon end office where AT&T has established a direct connection, either through an AT&T collocation arrangement, a third-party collocation arrangement, or via UNE dedicated transport. AT&T will configure its local network switches to tandem route the IXC traffic via direct

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192 *Id.*

193 In its exchange access tariff, Verizon offers an option associated with its Feature Group D trunks called Carrier Identification Parameter (CIP). CIP provides for the delivery of the IXC customer's carrier identification code (CIC) or the CIC designated by the originator of the call in the initial address message of the common channel signaling protocol. CIP is required to serve multiple IXC customers on a single trunk group. CIP is typically used where a large IXC wholesales its interexchange service to IXC resellers. AT&T (the CLEC in this case) requires CIP to offer competitive tandem service to multiple IXCs. Verizon should be required to provide CIP to

end office Feature Group D trunks ordered from Verizon between the applicable Verizon end offices and the subscribing AT&T switch. AT&T will either provide the facilities between these two switches or lease the facilities from third parties or from Verizon.[194] AT&T's original position was that its provision of competitive tandem service should be subject to the same terms that applied between AT&T and Verizon for meet point billing traffic when Verizon was passing the IXC traffic to AT&T. In an attempt to resolve the issue, AT&T has agreed that the terms for competitive tandem service need not be governed by the terms applicable to meet point billing trunks. Rather, AT&T will agree to treat these trunks separately. The revised proposal, however, still reflects AT&T's position that the terms and conditions relating to competitive tandem service should recognize that AT&T and Verizon are co-carriers in the provision of this service.[195]

Specifically, AT&T's position is that Verizon may bill AT&T for the function(s) it provides. That is, AT&T will agree to pay Verizon for the end office switching, and any dedicated transport as applicable, which Verizon provides. This should address Verizon's concern that AT&T "seeks to 'share' Verizon VA's access revenues without relieving Verizon VA of any of the functions and services it provides and for which it is compensated."[196] Under AT&T's proposal, Verizon will be fully compensated for the

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AT&T, when and where it is requested, under the terms of the interconnection agreement. AT&T Exh. 3 at 117-118.

194 With respect to those Verizon end offices for which AT&T has no collocation arrangement, the subscribing IXC would have to route traffic that would otherwise go directly to that end office, through Verizon's access tandem. This limitation on the service is necessary to enable the subscribing IXC to avoid paying two tandem switching functions (one to AT&T and one to Verizon). *Id.* at 114.

195 *Id.* at 115.

196 *Id.* at 115-116. AT&T's original proposal involved sharing the IXC revenues, in the same manner as is done for meet point traffic.

functions it provides that are associated with AT&T's competitive tandem service and there will be no revenue sharing.

e. Verizon should not be permitted to place use restrictions on UNEs so as to preclude AT&T from providing competitive tandem services. [Issue V.1]

Verizon argues that if AT&T wants to provide exchange access service to IXC's, AT&T must purchase service out of Verizon's access tariff.[197] In practical effect, Verizon is seeking to increase AT&T's cost of providing competitive tandem services to a level where AT&T cannot offer the service. This, of course, would foreclose the development of competition for exchange access.

On the other hand, AT&T's proposal that the functions provided by Verizon be purchased at UNE rates, will place both carriers on an equal footing so that competition in the exchange access market has a chance to develop, consistent with the intent of the Act.[198] AT&T's proposal also will provide AT&T with an economic incentive to build out its network to Verizon's end offices; something Verizon seems to favor given its arguments regarding tandem exhaust. And, it goes without saying this will also promote the development of facilities-based competition.

Verizon's refusal to allow AT&T to purchase UNEs to use in the provision of competitive tandem services also amounts to a use restriction on UNEs that is contrary to the provision of the Act and sound public policy, as established in AT&T's discussion of

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197 Verizon Exh. 4 at 43.

198 AT&T's proposal is also consistent with the FCC's access reform policies. The FCC acknowledged that access charges are not based on forward looking costs, but decided not to prescribe cost based access charges. Rather, the FCC indicated that it was relying on competition to drive access rate levels toward cost. *Access Charge Reform Order* at ¶¶ 258-84. Such competition cannot develop, however, if ILECs refuse, as Verizon has done in this case, to agree to nondiscriminatory interconnection terms for the provision of exchange access services.

Issue III.7, relating to service conversion to UNEs. The arguments set forth in that section, which support AT&T's position that there should not be any service related restrictions or requirements imposed in connection with the use of unbundled network elements to substitute for special access service, also apply with respect to any service related restrictions or requirements imposed in connection with the use of unbundled network elements to provide competitive tandem service. AT&T will not repeat those arguments here, except to say that the discussion in that section demonstrates that the imposition of UNE use restrictions are in violation of the ILEC's unbundling obligations under § 251(c)(3). Moreover, that discussion indicates that rejecting the imposition of UNE use restrictions in an interconnection agreement is entirely consistent with the Commission's policies on both universal service and access reform.

Use restrictions targeted specifically to prevent a carrier from using UNEs to provide competitive access service were rejected by the Texas Commission in the *Waller Creek* case.[199] There the commission found that CLECs may use dark fiber or other UNEs to provide wholesale access service to any telecommunications provider, regardless of who is serving the retail local end user customers. The Texas Commission expressly found that its decision was consistent with the Act and the *Local Competition Order*.[200]

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199 Second Order on Appeal or Order Nos. 9 and 2, *Petition of Waller Creek for Arbitration with Southwestern Bell Telephone Company*, PUC Docket No. 17922; *Complaint of Waller Creek Communications, Inc. for Post Interconnection Agreement Dispute Resolution with Southwestern Bell Telephone Company*, PUC Dkt. No. 20268 (April 1999).

200 The decision included one transitional condition – that if the IXC customer served at wholesale was not also a CLEC, then Waller Creek must collect a Residual Interconnection Charge (RIC) and remit to SWBT, if SWBT was serving the end user customer. The RIC was a transport element related access charge used implicitly to help support SWBT's maintenance of affordable interoffice network connections for SWBT's Texas customers with lower volume, predominantly rural toll calling patterns. At the time of the Order, the Commission was in the process of